

RCS 387/2023 - ORDER BELOW EXH.43

Kavita Balu alias Balaso Pukale Vs. Shalan Balu alias Balaso Pukale Etc.
CNR No. MHSO20-001412-2023

The present application is filed by defendants for recalling of plaintiff as witness under the provisions of Order XVIII, Rule 18 of the Code of Civil Procedure.

2. The defendants have contended that, in the present suit the plaintiff has filed evidence close pursis. However, there is ambiguity in the pleading, prayer and evidence of the plaintiff. Therefore, the ambiguity is required to be clarified. Hence, it is necessary to recall and re-examine plaintiff. Thus it is prayed that, the plaintiff be recalled and re-examined as witness.

3. Ld. Advocate for the plaintiff has filed say to present application and resisted the same. It is contended that, the application filed by the defendants is illegal, false. The application is not made under the provisions of Order XVIII Rule 18 of the C.P.C. The defendants have not mentioned any reasons, doubts which are required to be clarified by recalling witness. Hence, it is prayed that application be rejected.

4. Read the application and say. Perused the record. Heard both the sides.

5. The present suit is for partition, separate possession, declaration. The plaintiff has pleaded that, the suit property is her ancestral and hindu joint family property. The defendant no.1 is the concubine of her deceased father. The defendants no.2 to 4 are the illegitimate children born out of said relationship. It is notable that the defendant want to recall and re-examine plaintiff. It is notable that, presently the plaintiff has examined two witnesses. The plaintiff has filed her affidavit of examination in chief at Exh.12 and Exh.37. The cross-examination and re-examination of plaintiff is also completed. The plaintiff has examined another witness. The cross-

examination of said witness is also completed.

6. Order XVIII, Rule 17 of the C.P.C. provides that, the Court may at any stage of suit recall any witness who has been examined and may (subject to law of evidence for the time being force) put such question to him as the Court thinks fit. It is the settled position of law that, the power to recall any witness is to be invoked to clear any ambiguity that may have arisen during the course of examination of witness. Such power cannot be exercised to fill up the lacuna in the evidence of witness.

7. In the case at hand, it is stated on behalf of defendants that there is ambiguity in the pleading, examination in chief, prayer of the plaintiff. The defendants have not specifically pointed out the said ambiguity. The defendants have also not pointed out how the recall and re-examination of plaintiff would be necessary and it would have bearing on the ultimate decision of the suit. It is the settled position of law that the power of recalling of witness has to be exercise in appropriate cases and not as a general rule merely on the ground that, the recall and re-examination would not cause any prejudice to the parties. It is notable that, the defendants have failed to bring on record the ambiguity sought to be clarified by recalling the witness and necessity of the same affecting the decision of the suit. Thus the defendants have failed to raise justifiable the ground for recalling of plaintiff as witness. Thus in result following order is passed.

ORDER

1. The application is rejected.
2. No order as to costs.

Sangola.
Date:- 12/06/2025

(Smt. P. R. Kulkarni)
Civil Judge Jr. Dn.,
Sangola

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order.

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| (a) | Name of Stenographer | : | Shri. S. S. Patne |
| (b) | Court | : | Smt. P. R. Kulkarni,
Civil Judge, J.D. &
J.M.F.C. Sangola |
| (c) | Judgment /Order signed by P.O. on | : | 12/06/2025 |
| (d) | Judgment /Order uploaded on | : | 13/06/2025 |